

operated by units of local government within the State. Applicants must also describe the manner in which the grant will be used to carry out that plan.

2. A *certification regarding use of generally accepted laboratory practices*. Each applicant must submit a certification that any forensic laboratory system, medical examiner's office, or coroner's office in the State, including any laboratory operated by a unit of local government within the State, that will receive any portion of the grant amount (whether directly or through a subgrant) uses generally accepted laboratory practices and procedures established by accrediting organizations or appropriate certifying bodies.
3. A *certification and description regarding costs of new facilities*. Each applicant must submit a certification that the amount of the grant used for the costs of any new facility constructed as part of a program to improve the quality and timeliness of forensic science or medical examiner services will not exceed certain limitations set forth in the Coverdell law at 42 U.S.C. § 3797m(c). (See information on "permissible expenses" in the next section of this announcement.) Applicants must also describe specifically any new facility to be constructed as well as the estimated costs of the facility.
4. A *certification regarding external investigations into allegations of serious negligence or misconduct*. Each applicant must submit a certification that "a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount."

Applicants are expected to review the requirements of each certification carefully before determining whether the certification properly may be made. Any certification that is submitted must be executed by an official who is both familiar with the requirements of the certification and authorized to make the certification on behalf of the applicant agency (that is, the agency applying directly to NIJ). **Certifications must be submitted using the templates that appear in Appendix 2.**

Certifications made on behalf of subrecipients of award funds—rather than certifications made on behalf of the agency applying directly to NIJ—are not acceptable to satisfy the certification requirements.

In connection with the certification regarding external investigations described above, applicants **must** provide, prior to receiving award funds, the name(s) of the existing "government entity" (or government entities). This information is to be provided as an attachment to the program narrative section of the application. See "What an Application Must Include," below, and Appendix 3, which includes a template for the attachment.

Please note that funds will not be made available to applicant agencies that fail to provide the necessary information.

***Important Note on Referrals in Connection With Allegations of Serious Negligence or Serious Misconduct***

*The highest standards of integrity in the practice of forensic science are critical to the enhancement of the administration of justice. We assume that recipients (and subrecipients) of Coverdell funds will make use of the process referenced in their certification as to external investigations and will refer allegations of serious negligence or misconduct substantially affecting*

*the integrity of forensic results to government entities with an appropriate process in place to conduct independent external investigations, such as the government entities identified in the grant application.*

*For each fiscal year of an award made under this solicitation, recipients will be required to report to NIJ on an annual basis---*

- 1) *the number and nature of any such allegations;*
- 2) *information on the referrals of such allegations (e.g., the government entity or entities to which referred, the date of referral);*
- 3) *the outcome of such referrals (if known as of the date of the report); and*
- 4) *if any such allegations were not referred, the reason(s) for the non-referral.*

*Payments to recipients (including payments under future awards) may be withheld if the required information is not submitted on a timely basis.*

#### **Special Guidance on Certification Regarding External Investigations Into Allegations of Serious Negligence or Misconduct.**

The certification regarding external investigations has a number of requirements, each of which must be satisfied before the certification may be made. The official authorized to make the certification on behalf of the applicant agency must review each of the statutory elements and this guidance carefully before determining whether a certification properly may be made. After reviewing the information and guidance provided here, the official, on behalf of the applicant agency, must determine whether:

- A government entity exists
- With an appropriate process in place
- To conduct independent, external investigations
- Into allegations of serious negligence or misconduct
- Substantially affecting the integrity of the forensic results
- Committed by employees or contractors
- Of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.

**Note:** In making this certification, the certifying official is certifying that these requirements are satisfied not only with respect to the applicant itself but also with respect to each entity that will receive a portion of the grant amount. Certifying officials are advised that: (1) a false statement in the certification or in the grant application that it supports may be subject to criminal prosecution, including under 18 U.S.C. § 1001 and 42 U.S.C. § 3795a, and (2) Office of Justice Programs grants, including certifications provided in connection with such grants, are subject to review by the Office of Justice Programs and/or by the Department of Justice's Office of the Inspector General.

The following guidance, provided by way of examples for applicants' review, is designed to illustrate elements of the external investigation certification that the official authorized to make the certification on behalf of the applicant agency must take into account in determining whether the certification properly may be made.

Because it is not possible for NIJ to provide examples relating to every type of government entity with an appropriate process in place to conduct independent, external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors, this guidance should not be viewed as all inclusive. In addition, this guidance is not intended to constitute legal advice from NIJ on the question of whether the required certification properly may be made on behalf of the applicant. Such a determination must be made by an appropriate official and based on the statutory requirements of the certification after review of this guidance.

### **Illustrative Examples:**

1. The only government entity that will receive Coverdell award funds is a forensic laboratory that is a unit of a local law enforcement agency (e.g., a police department). The law enforcement agency has an Internal Affairs Division (IAD) that reports directly to the head of the law enforcement agency (the Police Chief) and the head of the unit of local government (the Mayor/City Commissioner). The IAD has the authority to conduct investigations into allegations of serious negligence or misconduct by laboratory employees and contractors.

*Guidance:* Execution of the certification might be appropriate under these facts. Nevertheless, the official authorized to make the certification on behalf of the applicant agency must be satisfied that the IAD at issue has the requisite authority to conduct independent investigations (for example, whether the IAD is completely free from influence or supervision by laboratory management officials) into allegations relating to employees or contractors of the laboratory.

2. A State intends to distribute Coverdell award funds to State and local forensic laboratories and medical examiners' offices. There is an Office of the Inspector General (OIG) in the State with authority to conduct investigations into allegations of serious negligence or misconduct by employees and contractors of forensic laboratories and medical examiners' offices, both at the State and local levels.

*Guidance:* Execution of the certification might be appropriate under these facts. Nevertheless, the certifying official must be satisfied that the State IG's authority in this regard is not circumscribed in such a way that the IG's ability to conduct independent investigations is limited (for example, through a reporting hierarchy that does not provide for the IG to report directly to the chief executive officer or another equally independent State official or office).

3. A city has applied for a Coverdell award and all funds will go to the city's forensic laboratory. There is a process in place whereby the city's District Attorney (DA) may appoint an independent investigator to conduct an investigation into allegations concerning the city's forensic laboratory. If the DA appoints an independent investigator, the investigator will have authority to investigate allegations of serious negligence or misconduct by both laboratory employees and contractors.

*Guidance:* Execution of the certification might be appropriate under these facts. In this regard, however, the certifying official must be satisfied that the process at issue

(appointment of an independent investigator by the city DA) includes procedures under which allegations involving the laboratory are submitted to or are made known to the DA, and that the DA's authority and responsibility to appoint an independent investigator to conduct investigations of such allegations is sufficiently delineated in city policies and/or regulations so that the "appropriate process" in place is clearly defined.

4. An applicant agency determines that the forensics laboratory director (or some other individual in the chain of command at the laboratory) has sole responsibility to conduct investigations into allegations of serious negligence or misconduct committed by laboratory employees.

*Guidance:* Under these circumstances, execution of the certification would not be appropriate because there is no process in place to conduct independent, external investigations into allegations of serious negligence or misconduct committed by laboratory employees and contractors.

5. A State applicant intends to distribute Coverdell award funds to forensic laboratories at both the State and local level. An independent commission established by the Governor has authority to investigate allegations of serious negligence or misconduct by employees, including employees of units of local government within the State.

*Guidance:* Under these circumstances, the existence of this commission is not itself a sufficient basis for execution of the certification. In this regard, the commission does not have authority to investigate allegations of serious negligence or misconduct by contractors of State and local government forensic laboratories that receive Coverdell funds. (If, however, some other government entity, distinct from the commission, has a process in place to conduct independent external investigations of allegations of serious negligence or misconduct by such contractors, execution of the certification might be appropriate depending on all the facts.)

6. A local forensic laboratory, which is intended to receive a portion of the funds from a Coverdell award to a State, notifies the State applicant that a quality assurance official is responsible for investigating allegations of serious negligence or misconduct by employees and contractors of the local forensic laboratory. The quality assurance official reports to the director of the forensic laboratory.

*Guidance:* Under these circumstances, execution of the certification would not be appropriate because the quality assurance official reports to the director of the forensic laboratory and, therefore, there is no process in place to conduct independent, external investigations of allegations against the forensics laboratory as required to make the certification.

7. An applicant agency (a forensics laboratory) intends to employ a contractor or a nongovernmental organization to conduct investigations into allegations of serious negligence or misconduct committed by laboratory employees.

*Guidance:* Under these circumstances, execution of the certification would not be appropriate, as there is neither a government entity nor an appropriate process in place to conduct independent, external investigations of allegations against the laboratory, whether alleged to be committed by laboratory employees and/or contractors, because the contractor or nongovernmental entity is employed by and responsible to the forensics laboratory.

8. An applicant agency is accredited by an independent accrediting or certifying organization such as CALEA, ASCLD-LAB, NAME, FQS-I, etc.

*Guidance:* In this situation, execution of the certification would not be appropriate. The fact of accreditation or certification by an outside entity on its own does not demonstrate that the agency has a process in place to investigate allegations of serious negligence or misconduct committed by employees or contractors. There is insufficient information to properly make the required certification in this situation.

## **Specific Information—Paul Coverdell Forensic Science Improvement Grants Program**

Coverdell grants may be used to improve the quality and timeliness of forensic science and medical examiner services, including services provided by laboratories operated by States and/or units of local government. Among other things, funds may be used to eliminate backlogs in the analysis of general forensic evidence or to train and employ forensic laboratory personnel to eliminate such backlogs.

### **A. Available funding**

Because certain authorized deductions may be taken, between \$33,288,028 and \$35,000,000 is anticipated to be available for Coverdell awards in FY 2010. The figures and calculations reflected in this solicitation (for example, the estimated minimum award to States and the estimated amount of “base” funds, by State) are based on an estimated total amount available of \$33,228,028, although, as indicated, the amount could be as much as \$35,000,000.

#### **1. “Base” funds for States**

Approximately 75 percent of the funds available for Coverdell grants will be allocated among eligible States based on population (State “base funds”). The approximate amount for each eligible State is listed in Appendix 1: “Estimated Amount of Base Funds, by State.”<sup>2</sup>

#### **2. Competitive funds for States and units of local government**

Twenty-five percent of the available funds will be allocated among States and units of local government through a competitive process. The average annual number of part 1 violent crimes reported by each State to the Federal Bureau of Investigation for calendar years 2006, 2007 and 2008, existing resources, and current needs of the potential grant recipient will be considerations in award decisions. For FY 2010, the maximum amount a State or unit of local government may receive in competitive funds is **\$175,000**.

Units of local government that provide forensic science or medical examiner services (whether through a forensic science laboratory, medical examiner’s office, or coroner’s office) may apply directly to NIJ for competitive funds. A State may apply through its SAA for competitive funds for forensic sciences improvements **above and beyond** those it can accomplish with its estimated amount of base funds.

#### **3. Minimum awards to States**

The Coverdell law sets a floor for the total amount an eligible applicant State will receive as its Coverdell grant. For FY 2010, the minimum Coverdell grant to an eligible State will

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<sup>2</sup> Under the provisions of the Coverdell law, several factors (including the number of eligible State applicants) affect “base” amounts.